



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET- SUITE 200

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-UFO

August 1, 2006

**CERTIFIED MAIL #**  
**RETURN RECEIPT REQUESTED**

Craig J Cornell, President and Registered Agent  
716 S. Washington St  
P.O. Box 348  
Dillon, MT 59725

Re: UNDERGROUND INJECTION  
CONTROL PROGRAM (UIC)  
Proposed Order and Penalty Complaint  
with Notice of Opportunity for Hearing

Dear Mr. Cornell:

The enclosed document is a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing ("Order") for violations of the Safe Drinking Water Act ("SDWA"). Please have Cornell Fertilizer, Inc. ("Cornell Fertilizer") carefully read the Order soon, since it describes Cornell Fertilizer's rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Order and, in case Cornell Fertilizer meets the criteria, an information sheet about the Small Business Regulatory Fairness Act.

**Cornell Fertilizer is required to take action within 30 calendar days of your receipt of this Order** to avoid the possibility of having a default judgment entered against Cornell Fertilizer that could impose the penalty amount proposed in the Order.

Whether or not Cornell Fertilizer requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. Cornell Fertilizer may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, Cornell Fertilizer should contact Eduardo Quintana, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA's Order and the opportunity to provide written comments on the Order is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the Order has a right to participate in the hearing.

If Cornell Fertilizer has technical questions relating to this matter, the person most knowledgeable on my staff is Britta C. Copt, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6229 or (303) 312-6229. For all legal questions, the person most knowledgeable on my staff is Eduardo Quintana at 1-800-227-8917 ext. 6924 or (303) 312-6924. Ms. Copt and Mr. Quintana can also be reached at the following addresses:

Britta C. Copt (Mail Code 8ENF-UFO)  
U.S. EPA Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466, or

Eduardo Quintana (Mail Code 8ENF-L)  
Enforcement Attorney  
U.S. EPA Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466

We urge Cornell Fertilizer's prompt attention to this matter.

Sincerely,

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

Proposed Administrative Order  
and Opportunity to Request Hearing  
40 C.F.R. Part 22  
Public Notice  
U.S. EPA Small Business Resources Fact Sheet

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. SDWA-082-006-0051**

In the Matter of:	)	
	)	
Cornell Fertilizer, Inc.	)	<b>PROPOSED ORDER AND PENALTY COMPLAINT</b>
	)	<b>WITH NOTICE OF OPPORTUNITY FOR HEARING</b>
	)	
	)	
Respondent.	)	

**INTRODUCTION**

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 U.S.C. § 300h-2(c). The Environmental Protection Agency (EPA) regulations authorized by the SDWA are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits, or EPA regulations constitute violations of the Act. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA official has been properly delegated the authority to issue this Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (complaint).

3. EPA alleges that Cornell Fertilizer, Inc. (Respondent) has violated the Act and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint, the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

5. To disagree with the complaint and assert its right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk  
999 18<sup>th</sup> Street, Suite 300 (8RC)  
Denver, Colorado 80202

within 30 calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR**

**DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

### **QUICK RESOLUTION**

6. Respondent may resolve this proceeding at any time by permanently closing the motor vehicle waste portion of its [Class V] disposal system (well) and paying the penalty amount proposed in the complaint. Such action to close the well and make payment need not contain any response to, or admission of, the allegations in the complaint. Such action to close the well and make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

### **SETTLEMENT NEGOTIATIONS**

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Respondent wants to pursue the possibility of settling this matter, or has any other questions, contact Eduardo Quintana, Enforcement Attorney, at 1-800-227-8917 ; extension 6924 or 303-312-6924 or at the address identified in paragraph 31 herein. **Please note that calling Mr. Quintana or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

### **GENERAL ALLEGATIONS**

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC) program for Class I, III, IV, and V wells in the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. Parts 124, 144, 146, 147, and 148.

9. On October 6, 2004, an EPA representative performed an inventory verification inspection of the Cornell Fertilizer, Inc. facility.

10. There was a floor drain in the shop area that connected to a septic tank. Motor vehicle maintenance was performed in the shop area.

11. Motor vehicle waste disposal wells are defined at 40 C.F.R. § 144.81(16) as follows: "Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work."

12. Respondent's disposal system, as identified in the inspection in paragraph 9 above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. § 144.6 and § 146.5 and is a motor vehicle waste disposal well as defined by 40 C.F.R. § 144.81(16). Respondent is currently authorized by rule (40 C.F.R. § 144.24) to operate the disposal system described above. Respondent is therefore subject to applicable requirements of 40 C.F.R. §§ 124, 144 and 146.

13. As authorized by 40 C.F.R. § 144.12(c) and (d) and 40 C.F.R. § 144.88(b), on November 9, 2004, EPA mailed a UIC Shallow Injection Well Program letter to Respondent. The letter was received by Respondent on November 12, 2004. The letter required the Respondent to either:

- a. submit a completed permit application by January 12, 2005, or
- b. submit a plan for permanent closure of the motor vehicle waste disposal portion of the system (including a written schedule and plan for alternative disposal of the waste) by December 12, 2004 and permanently close that portion of the system by April 5, 2005. Once the system was closed or retrofitted, documentation needed to be provided to EPA including an as-built sketch of the drain system showing where the changes had been made.

14. Cornell Fertilizer, Inc. did not respond to the November 9, 2004 letter.

15. On January 4, 2005, EPA contacted Roy Cornell to discuss closure options for the disposal system. During this discussion, Mr. Cornell stated that the system was currently still open. Mr. Cornell stated that he planned to plug the drain.

16. To date, EPA has not been notified by Respondent that the disposal system has been closed.

17. The Respondent, Cornell Fertilizer, Inc., is incorporated in the state of Montana.

18. Respondent is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

19. Respondent, at all times pertinent hereto, owned and operated a facility that includes a maintenance shop where motor vehicle repair occurs, located at 1200 Blacktail Road, Dillon, Montana.

20. Beneath the disposal system are underground sources of drinking water (USDWs), including but not limited to the shallow Northern Rocky Mountains Intermontane Basin Aquifer System.

#### **COUNT 1**

21. Respondent is in violation of 40 C.F.R. § 144.12(c) and (d) and 40 C.F.R. § 144.88(b) for failure to submit a written schedule for retrofitting the facility and/or plugging the drain(s), and an alternative disposal plan for its waste fluids. The duration of Respondent's violations for failure to submit a written schedule for closure of the Class V disposal system is from December 12, 2004 to the present.

#### **COUNT 2**

22. Respondent is in violation of 40 C.F.R. § 144.12(a) and 40 C.F.R. § 144.88(b) for failure to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. The duration of Respondent's violations for failure to close or retrofit the Class V disposal system is from April 5, 2005 to the present.

#### **PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY**

23. The Act authorizes the assessment of a civil penalty of up to \$32,500 per day, for each violation of the Act, 42 U.S.C. § 1423(b). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violation; any economic benefit or savings gained resulting from the violation; Respondent's history of such violations; Respondent's culpability for the violation; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require.

24. In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of fifty thousand dollars (\$50,000) be assessed against Respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

Respondent owns the property and had the ability and means to comply by closing or retrofitting the waste disposal system to prevent movement of fluids to a USDW that may endanger the health or persons.

Prior Compliance History

This Order is the first enforcement action EPA Region 8 has issued to Respondent requiring compliance with the applicable UIC regulations.

Good-Faith Efforts to Comply

Respondent had not made an effort to make changes to the disposal system by the required date.

Degree of Culpability

Respondent should have been aware of all UIC requirements prior to EPA's first contact. On November 12, 2004, when Respondent received EPA's UIC Shallow Injection Well Program letter (see paragraph 13, above), Respondent had actual notice of the requirements.

Economic Benefit

An economic benefit was experienced by Respondent for failure to permit or close its Class V well.

Ability to Pay

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding Respondent's ability to pay the penalty proposed in this Complaint.

Other Matters that Justice may Require

No adjustments made regarding these factors at this time.

25. Additionally, Respondent shall comply with the requirements of 40 C.F.R. § 144.12(c)(1) and (2) and 40 C.F.R. § 144.88(b), by permanently closing the motor vehicle waste portion of the Class V disposal system pursuant to a plan submitted to and approved by EPA. Respondent shall submit the plan to:

Britta Copt (8ENF-UFO)  
UIC Program  
USEPA Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466.

26. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8  
Regional Hearing Clerk  
P.O. Box 360859  
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be mailed to the following address:

Eduardo Quintana (8ENF-L)  
Enforcement Attorney  
U.S. EPA - Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466.

27. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 1423(c)(3)(B).

28. The Administrative Law Judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to the \$32,500 per day per violation authorized in the statute.

29. This Complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this Complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

Issued this 12<sup>TH</sup> day of July, 2006.

**SIGNED**

\_\_\_\_\_  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the PROPOSED ORDER AND PENALTY COMPLAINT WITH NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Craig J Cornell  
716 S. Washington St  
P.O. Box 348  
Dillon, MT 59725

**August 1, 2006**

Date

**SIGNED**

Judith McTernan

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE REGIONAL HEARING CLERK**

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON AUGUST 1, 2006.**